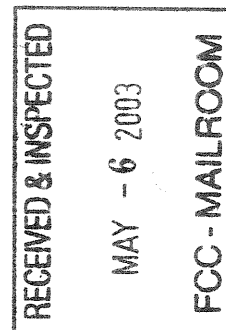


FEDERAL COMMUNICATIONS COMMISSION

**445 12th STREET, S.W.
WASHINGTON, DC 20554**

May 5, 2003

In Reply Refer to:
1800B3



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In re: Nevada Public Radio Corporation
Request for waiver of Section 74.1283(c)

Dear Mr. Persh:

This letter responds to the December 19, 2000 request, as supplemented,¹ filed on behalf of Nevada Public Radio Corporation ("NPR")² for waiver of the Commission's FM translator station identification rule, 47 C.F.R. § 74.1283(c). Specifically, NPR requests that the Commission waive Section 74.1283(c)(1) to permit KNPR-FM to omit the thrice daily identification announcements of the 10 translator stations that rebroadcast its signal.³ For the reasons set forth below, we deny the waiver request.

In support of the waiver, NPR correctly indicates that compliance with the rule requires that, three times daily – between 7:00 and 9:00 a.m., between 12:55 and 1:05 p.m., and between 4:00 and 6:00 p.m. – KNPR-FM must broadcast the list of the call letters and city of license for all ten of the translator stations rebroadcasting its signal.⁴ This announcement takes nearly 60 seconds to complete, complains NPR, and it has received listener complaints regarding the "lengthy, repetitious, and disruptive broadcast of translator call letters and locations" generally, states NPR, the listener will complain that the announcement "interferes with the pleasure he or

¹ The waiver request was supplemented at the request of the staff on October 12, 2001, November 16, 2001, and January 24, 2002.

² NPR is the licensee of "parent" station KNPR-FM, Las Vegas, Nevada, and "satellite" stations KTPH(FM), Tonopah, KLNK(FM), Panaca, and KWPR(FM), Lund, all in Nevada.

³ Of the 10 translator stations rebroadcasting the KNPR-FM signal, eight are owned by NPR: K201BF, Scotty's Junction, Nevada; K203DR, Caliente, Nevada; K204AN, Pahrump, Nevada; K204AO, Moapa Valley, Nevada; K204AT, Mesquite, Nevada; K208BB, Laughlin, Nevada; K219AV, Beatty, Nevada, and K220DS, Lake Havasu City, Arizona. Station K204BW, Death Valley, California, is owned by the Death Valley Natural History Association, and Station K207CY is owned by Smoky Valley Television District. In the October 12, 2001 supplement to NPR's waiver request, the latter two entities expressly consented to permitting NPR to file the waiver request on behalf of their translator stations.

⁴ See 47 C.F.R. § 74.1283(c)(1). The translator call signs may also be submitted once each hour in International Morse Code. Section 74.1283(c)(2). NPR claims that this option provides no practical solution.

she takes in listening to the station's non-commercial news, informational, and classical music format." Additionally, in light of this format, KNPR-FM finds it "difficult" to make these announcements at appropriate times, "particularly within the short breaks allowed in network programs," without disrupting programming. NPR argues that the FM translator identification information contains no meaningful information for the average listener, and opines that "its listeners probably do not pay attention to these announcements or understand that their purpose is to facilitate identification of FM translators which may be unlicensed or causing interference."

In response to a staff inquiry concerning the effort NPR will undertake to substitute for the translator identification requirements, NPR (in its January 24, 2002 supplement) that: (1) it will identify all of the affiliated translator stations twice daily, when KNPR-FM signs on in the morning and when it signs off at night; (2) it would, at least once per hour, at the top of the hour, identify the call sign, frequency, and community of license for each of its four full-service satellite facilities and indicate that the translator call sign/location information is available on the KNPR website or by calling the station's 800 number; and (3) regularly -- typically eight to ten times per hour -- identify itself in programming breaks as "KNPR -- Nevada Public Radio." NPR argues that any reports of interference resulting from reception of the KNPR stations or translators will identify KNPR-FM or NPR as the relevant signal. In the event of any interference complaints, NPR and the other licensees comprising its translator network have agreed to participate in a prompt station-by-station suspension of operation in order to identify and remedy promptly the interference.

Discussion: An applicant seeking a waiver of the Commission's rules must plead with particularity the facts and circumstances which warrant such action.⁵ Waiver of a Commission rule is appropriate if: (1) special circumstances warrant deviation from the general rule; (2) waiver will not undermine the policy served by the rule; and (3) deviation from the rule will serve the public interest.⁶ Since our rules presumptively serve the public interest, those seeking their waiver have the burden of establishing that the public interest is better served, on the facts presented, by a waiver than by application of the appropriate rules.

Section 74.1283(c)(1) indicates that FM translator stations should (unless they use the International Morse Code system of identification described in Section 74.1283(c)(2)) arrange with the primary station to identify the translator station's call sign and location three times daily, as described by NPR above. If the primary station airs the translator station identification announcement, the translator must arrange for the primary station to keep its station records, and provide to the primary station a notification of the translator station call letters and location and the name address, and telephone number of the licensee or its service representative. However, Section 74.1283(e) indicates that the Commission may, in its discretion, specify other methods of identification.

⁵ See 47 C.F. R. Section 1.3; see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) ("*WAIT Radio*")

⁶ See *Columbia Communications Corp. v. FCC*, 832 F.2d 189, 192 (D.C. Cir. 1987) (quoting *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F. 2d 644, 666 (D.C. Cir 1968) (per curiam); see also *In Re: Application of Board of Education of the City of Atlanta (WABE-FM)*, 11 FCC Rcd 7763, 7767, ("A waiver showing must be factually grounded, particularized and clear") (citing *WAIT Radio*, 418 F.2d at 1156-57).


NPR states that it has received listener complaints regarding the lengthy disruption of programming necessary to broadcast the translator station identifications, it believes that its listeners do not pay attention to these announcements or understand their purpose. However, NPR submits no documentation of any listeners' complaints.

Furthermore, the Commission's station identification regulations are predicated in part on Article 19 of the International Telecommunications Union ("ITU") Radio Regulations which require broadcast stations to identify themselves by providing, preferably hourly, broadcast of their call signs.⁷ The station identification is needed by the FCC staff in the public interest of locating malfunctioning translators which might otherwise cause interference to full-service stations or interfere with safe air navigation.⁸ For originating stations which broadcast the station identification of associated translators, the Commission has reduced the burden by requiring in Section 74.1283 that station identification for the translators be broadcast only three times a day. NPR's waiver request fails to demonstrate any special circumstances warranting relief from this minimal requirement, and its proposed alternatives -- such as referring regularly to "Nevada Public Radio" and listing the translator station's on the NPR web site -- do not provide a satisfactory substitute for compliance with the rule.

Finally, in support of its request, NPR cites similar waivers previously granted to KSFI(FM) and KUER(FM), Salt Lake City, Utah in 1977 and 1988, respectively. It also provides a copy of a similar waiver granted in 1997 to KUWR(FM), Laramie, Wyoming. To the extent that these waiver grants may be considered precedent for this specific waiver request,⁹ they are overruled.

In light of the above discussion, the request by Nevada Public Radio for a waiver of 47 C.F.R. Section 74.1283(c)(1) IS DENIED.

Sincerely,


for Peter H. Doyle, Chief
Audio Division
Media Bureau

⁷ See ITU Radio Regulations (2001), Article 19, Sections 1 (all transmissions shall be identified by a call sign or other recognized means of identification) and 4 (identification signals shall be transmitted as frequently as practicable during transmission, at least hourly, preferably between 5 minutes before to 5 minutes after the top of the hour).

⁸ See, e.g., *In the Matter of Creation of Low Power Radio Service*, 15 FCC Rcd 2205, 2276 ¶179 (2000) ("It is imperative for a variety of reasons, including enforcement, convenience to the public, and conformance with international agreements, that all broadcasters . . . use unique identifiers on the air.")

⁹ Unpublished staff actions generally have no binding precedential value. See 47 C.F.R. 0.445(e).